

The Honorable Robert J. Bryan

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

STATE OF WASHINGTON,

Plaintiffs,

v.

THE GEO GROUP, INC.,

Defendant.

Case No. 3:17-cv-05806-RJB

**DEFENDANT'S MOTION FOR  
LIMITED PROTECTIVE ORDER  
REGARDING DEPOSITION OF RYAN  
KIMBLE**

**NOTE ON MOTION CALENDAR:  
MAY 10, 2019**

**INTRODUCTION AND RELIEF REQUESTED**

The GEO Group, Inc. ("GEO") respectfully asks this Court to enter an order preventing the State of Washington ("State") from seeking testimony from Ryan Kimble, GEO's Associate Warden for Finance and Administration at the Northwest Detention Center ("NWDC"), about GEO's financial information that is the subject of GEO's pending mandamus action in the Ninth Circuit Court of Appeals. GEO seeks narrow relief here: GEO agrees that Kimble can be deposed on May 22, 2019, and that the State may leave the deposition open for further testimony if the Ninth Circuit denies GEO's petition. GEO, however, objects to the State asking Kimble about the financial information that GEO is seeking to protect from disclosure in its mandamus action. Accordingly, GEO seeks a protective order under Fed. R. Civ. P. 26(c) barring the State from questioning Kimble about GEO's profits, losses, budgets, and other highly confidential financial information that is currently under review in the Ninth Circuit.

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## COMPLIANCE WITH CONFERRAL REQUIREMENT

Counsel for GEO conferred with the State by telephone and by letter on April 15, April 18, April 19, April 22, and April 24 in a good faith effort to resolve this dispute, but could not reach agreement. As a result, GEO files the present motion to protect the disclosure of confidential information in advance of Kimble’s deposition, which is currently scheduled to occur on May 22, 2019.

## BACKGROUND

### **I. GEO filed its mandamus petition to avoid the substantial harm that would result from the disclosure of its confidential financial information.**

As part of its unjust enrichment claim, the State moved to compel GEO to produce its financial information based on two theories of damages: “(1) the difference between ‘fair wages’ and what GEO actually paid detainee workers; and (2) the profit derived as a result of its unfair labor practices.” (Dkt. # 126 at p. 1-2.) The State argued that it is “entitled to discover and evaluate the full value of the benefit received and retained by GEO, including company-wide profits, resulting from its practice of failing to pay adequate compensation to detainees at the NWDC.” (*Id.* at p. 15.) GEO objected to discovery of its profit and other financial information on the grounds that the information is confidential, irrelevant, and prejudicial to GEO. (*See id.* at pp. 17-25.)

The Court partly denied the State’s motion, finding that “[g]enerally speaking, the State’s discovery requests are overbroad, complex, and ask for documents that may not be in existence and are not proportional to the needs of the case.” (Order, Dkt. # 133 at p. 8.) The Court also found that “[t]he burden and expense of responding to the discovery requests probably outweighs their likely benefit.” (*Id.* at pp. 8-9.) As such, the Court struck portions of the State’s requests and modified others to shape an order compelling disclosure of various sensitive GEO financial documents, including:

- GEO’s profits or losses for the NWDC from 2005 to the present;
- GEO’s financial statements, Profit and Loss statements, and budget, if any, for the

NWDC for each of the years during the relevant time period;

- The NWDC's financial statements, Profit and Loss statements, and budget, including all documents that set forth the detailed operating costs of the facility, Voluntary Work Program costs, labor costs, and payroll expenses as well as all details of revenue, contract payments and reimbursements for the NWDC;
- The profit or loss of the NWDC's Voluntary Work Program, including budget, from 2005 to the present, and all documents that set forth the detailed operating costs of the Voluntary Work Program, as well as revenues, payments and reimbursements received;
- Financial analysis, financial models, analysis of profits earned, valuation of the work performed, or other assessments of the Voluntary Work Program at the NWDC from 2005 to present;
- Financial performance analyses, financial models, or other financial evaluations prepared for the purpose of GEO's offer(s) and bid(s), and negotiations related to amendment(s) and renewal(s), of contracts related to the NWDC from 2005 – present; and
- Any per diem rate calculations and models related to GEO's NWDC Contract(s) from 2005 to present, including, but not limited to, the following factors: "Voluntary Work Program" costs and expenses; labor costs and payroll expenses (excluding Voluntary Work Program); expected and guaranteed occupancy; all other costs of providing services (including food, medical, building operations, etc.); desired margins.

(*Id.* at pp. 9-10.)

After the Court denied GEO's motion for reconsideration and motion for interlocutory review, GEO filed a petition for a writ of mandamus with the Ninth Circuit on January 3, 2019. (Dkt. # 166.) In that petition, GEO asked the Ninth Circuit to vacate the order compelling GEO to produce its highly confidential financial information. (*Id.*)

Under the Ninth Circuit's local rules, a petition for writ of mandamus that fails to "make[] a prima facie showing justifying issuance of the writ, it will deny the petition forthwith." Advisory Comm. Note to Circuit R. 21-1 to 21-4. On March 19, 2019, however, the Ninth Circuit ordered the State to file a response to the petition specifically addressing "why [GEO's] financial information is relevant to the [State's] claim for unjust enrichment." (*See* Dkt. # 178.) This Court filed its optional response on April 1, 2019, and the State filed its response on April 2, 2019. GEO filed its reply brief on April 8, 2019. The mandamus action is now fully briefed, and the Ninth Circuit is considering

1 the action for oral argument in August, October, or November 2019. (*See* Armstrong Decl., Ex. 6.)

2 **II. The State continues to seek discovery about GEO financial information while GEO's**  
 3 **mandamus action is pending.**

4 On March 29, 2019, the parties held a telephone conference to discuss several discovery  
 5 matters including the scope of Kimble's upcoming deposition. (Armstrong Decl. ¶ 2.) GEO advised  
 6 the State that Kimble has personal knowledge about GEO's financial information that is part of  
 7 GEO's mandamus action, and that it would impact the testimony he would be able to provide at his  
 8 deposition while the mandamus action is pending. (*Id.* ¶ 2.) On April 15, 2019, the parties again  
 9 discussed Kimble's upcoming deposition, and the State confirmed that it intended to question  
 10 Kimble regarding GEO's financial information.<sup>1</sup> (*Id.* ¶ 3.) GEO asked the State to limit its  
 11 questioning of Kimble to matters outside the mandamus action pending Ninth Circuit review, and  
 12 offered to leave the deposition open on those issues until after the Ninth Circuit issues its decision.  
 13 (*Id.*, Exs. 1, 3, 5.) The State refused, so GEO filed this motion. (*See id.*, Ex. 4.)

14 **ARGUMENT**

15 Good cause exists to prevent the State from questioning Kimble about his personal  
 16 knowledge of GEO's highly confidential financial information because that issue is currently under  
 17 review in the Ninth Circuit. GEO agrees that the State can depose Kimble about matters not subject  
 18 to the mandamus action, and leave Kimble's deposition open until the Ninth Circuit issues its  
 19 decision on the relevance of GEO's financial information. Compelling Kimble to testify about  
 20 GEO's confidential financial information could, in effect, eliminate GEO's mandamus rights  
 21 because the financial information would be disclosed before the Ninth Circuit issues a ruling.  
 22 Accordingly, this Court should grant GEO's motion for a limited protective order preventing the

23 <sup>1</sup> During that conferral, the State advised GEO that it planned to question Kimble about certain  
 24 financial documents that GEO had produced, but did not indicate which specific documents it planned  
 25 to use at the deposition. (Armstrong Decl. ¶ 3 & Ex. 1.) After the conferral, GEO looked at the  
 26 production made by its prior counsel and found several highly confidential financial documents that  
 had been inadvertently produced. (*Id.* ¶ 3.) GEO promptly sent a letter to the State seeking the return  
 of those documents under the protective order, and advised the State that those documents could not  
 be used in Kimble's deposition since they were inadvertently produced. (*Id.*, Exs. 1, 3, 5.)

1 State from eliciting testimony from Kimble about GEO's financials unless and until the Ninth  
2 Circuit determines that information must be disclosed.

3 Under Rule 26(c), a party "from whom discovery is sought may move for a protective order"  
4 and if good cause is shown, a court should issue an order to protect that party "from annoyance,  
5 embarrassment, oppression or undue burden or expense." Fed. R. Civ. P. 26(c). Good cause exists  
6 if the moving party shows that a specific prejudice or harm will result without the protective order.  
7 *Stormans, Inc. v. Selecky*, 251 F.R.D. 573, 576 (W.D. Wash. 2008). Thus, when a party seeks  
8 deposition testimony about extensive financial information that causes an undue burden or is not  
9 proportional to the needs of the case, a court should grant a protective order prohibiting such  
10 testimony. *McArthur v. Rock Woodfired Pizza & Spirits*, 318 F.R.D. 136, 142 (W.D. Wash. 2016).  
11 Prejudice also exists if the disclosure of certain information could moot a pending appeal. *See Doe*  
12 *No. 1 v. Reed*, 697 F.3d 1235, 1239 (9th Cir. 2012) (noting that because unsealing documents  
13 "cannot be reversed," an appeal would become moot once the documents were unsealed).

14 Here, GEO has good cause for a protective order because if Kimble is required to testify  
15 about the very financial information that is currently under review in the Ninth Circuit, it could  
16 effectively moot GEO's petition, and thus deprive GEO of its mandamus rights. Release of GEO's  
17 financial information—through deposition or otherwise—is the precise harm that GEO sought to  
18 avoid by seeking immediate appellate review of this Court's order compelling the disclosure of that  
19 information. GEO has consistently argued that its sensitive financial information is not relevant to  
20 the State's unjust enrichment claim, and that it will be substantially harmed if forced to reveal that  
21 information to the State. And by ordering the State to provide an explanation about how GEO's  
22 financial information is relevant to the State's unjust enrichment claim, the Ninth Circuit determined  
23 that GEO's petition has prima facie merit. Indeed, the Ninth Circuit is considering GEO's petition  
24 for oral argument in August, October, or November this year. (Armstrong Decl., Ex. 6.) While  
25 GEO is willing to proceed with Kimble's deposition on topics outside of the Ninth Circuit's  
26 review—and agrees to leave the deposition open pending the Ninth Circuit's decision—it is entitled

1 to a protective order prohibiting the State from questioning Kimble about GEO's protected financial  
2 information until the Ninth Circuit rules that such information is relevant in this matter.

3 In contrast, a limited protective order preventing the State from seeking specific financial  
4 information during Kimble's deposition will not prejudice the State. Because GEO agrees to leave  
5 Kimble's deposition open, the State will obtain the testimony it seeks from Kimble if the Ninth  
6 Circuit determines that GEO's financial information is relevant to the State's claims. To further  
7 avoid any potential prejudice to the State, GEO will not oppose an extension of the discovery  
8 deadlines to allow the State to complete Kimble's deposition once the Ninth Circuit issues its  
9 decision. Accordingly, GEO's requested limitations to Kimble's deposition will not prejudice any  
10 party, and will prevent significant harm to GEO if GEO is forced to disclose financial information  
11 that could moot its pending mandamus action.

## 12 CONCLUSION

13 For the reasons provided, GEO's motion for protective order under Rule 26(c) should be  
14 granted so that Kimble is not questioned on matters presently at issue in the mandamus action in the  
15 Ninth Circuit Court of Appeals. Specifically, GEO seeks an order prohibiting the State from  
16 questioning Kimble about:

- 17 1. GEO's profits or losses for the NWDC from 2005 to the present;
- 18 2. GEO's financial statements, Profit and Loss statements, and budget, if any, for the  
19 NWDC for each of the years during the relevant time period;
- 20 3. The NWDC's financial statements, Profit and Loss statements, and budget,  
21 including all documents that set forth the detailed operating costs of the facility,  
22 Voluntary Work Program costs, labor costs, and payroll expenses as well as all  
23 details of revenue, contract payments and reimbursements for the NWDC;
- 24 4. The profit or loss of the NWDC's Voluntary Work Program, including budget, from  
25 2005 to the present, and all documents that set forth the detailed operating costs of  
26 the Voluntary Work Program, as well as revenues, payments and reimbursements  
received;
5. Financial analysis, financial models, analysis of profits earned, valuation of the  
work performed, or other assessments of the Voluntary Work Program at the  
NWDC from 2005 to present;

6. Financial performance analyses, financial models, or other financial evaluations prepared for the purpose of GEO's offer(s) and bid(s), and negotiations related to amendment(s) and renewal(s), of contracts related to the NWDC from 2005 – present; and
7. Any per diem rate calculations and models related to GEO's NWDC Contract(s) from 2005 to present, including, but not limited to, the following factors: "Voluntary Work Program" costs and expenses; labor costs and payroll expenses (excluding Voluntary Work Program); expected and guaranteed occupancy; all other costs of providing services (including food, medical, building operations, etc.); desired margins.

Dated: May 2, 2019

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing DEFENDANT'S MOTION FOR PROTECTIVE ORDER REGARDING DEPOSITION OF RYAN KIMBLE to be served on the following person[s]:

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DATED: May 2, 2019.

s/ Kristin M. Asai  
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